



Serial No.: 10/617,923  
Inventor(s): DeMott et al.

Case No.: 5530

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

Application of: DeMott et al.  
Serial Number: 10/617,923  
Filed: July 11, 2003  
Title: NEEDED NON-WOVEN TEXTILE COMPOSITE  
Group Art Unit: 1771  
Examiner: Juska, Cheryl Ann

**Certificate of Mailing Under 37 CFR § 1.8**

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Date: February 21, 2007

Signature: Linda-Ann Manley

Name: Linda-Ann Manley

**BRIEF ON APPEAL UNDER 37 CFR § 41.37**

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PO Box 1450  
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Sir:

The following appeal brief is submitted pursuant to the Notice of Appeal filed on or about September 25, 2006 from the Final Action dated April 25, 2006.

A request/petition for a three (3) month extension of time accompanies this submission.

REAL PARTY IN INTEREST

The above referenced application is the subject of an assignment to Milliken & Company, located in Spartanburg, S.C., which is the real party in interest.

RELATED APPEALS AND INTERFERENCES

None.

STATUS OF THE CLAIMS

Claims 1-6, 8, 10-20, 23, 26-40, 42, and 44-51 have been finally rejected and are the subject of the instant appeal.

Claims 7, 9, 21, 22, 24, 25, 41 and 43 have been cancelled and are not included in the instant appeal

A copy of the current claims is attached hereto as the Claims Appendix.

STATUS OF THE AMENDMENTS

No amendment has been filed subsequent to final rejection.

SUMMARY OF CLAIMED SUBJECT MATTER

Independent claim 1 is directed to a textile composite shown, for example, as reference numeral 30 in FIGS. 3 and 4 including a nonwoven needled layer shown as reference numeral 28 in FIGS. 3 and 4 with a soft, first pile-containing side and a second side opposite said first pile-containing side as described at page 2, lines 18-20. The claimed composite also includes a binder material comprising an acrylic latex binder applied to the second side, as described at page 10, line 19 – page 11, line 10. An adhesive layer shown for example as reference numeral 32 in FIGS. 3 and 4 is disposed adjacent the second side only, as described at page 11, line 12 – page 12, line 2. A polymeric film layer shown as reference numeral 33 in FIGS. 3 and 4 is disposed adjacent the adhesive layer, as described at page 2, lines 21-22 and page 12, lines 7-19.

Independent claim 27 is directed to a textile including a nonwoven needled layer shown as reference numeral 28 in FIGS. 3 and 4 comprised of polymeric fibers. As described at page 8, lines 7-9, the fibers are selected from the group consisting of polyester fibers, polypropylene fibers, and mixtures thereof. In addition, the polymeric fibers comprise a flame retardant material as set forth at page 4, lines 14-16). Furthermore, a flame retardant polyurethane film layer shown as reference numeral 33 in FIGS. 3 and 4 and described at page 12, lines 7-19 is adhesively bonded to the nonwoven needled layer 28. The polyurethane film layer in this embodiment of the invention comprises an aromatic polyether as set forth for example at page 13, lines 1-9.

Independent claim 32 is directed to textile including a nonwoven needled layer shown as reference numeral 28 in FIGS. 3 and 4. The needled layer 28 is comprised of fibers as described, for example, at page 8, lines 7-20. The nonwoven needled layer has a first pile-containing side and a second side opposite the first pile-containing side as shown in FIGS. 3 and 4 and described at page 2, lines 18-20. A binder material comprising an acrylic latex binder is applied to the second side only of the nonwoven needled layer as described at page 10, line 19 – page 11, line 10. A polyester-based adhesive layer shown for example as reference numeral 32 in FIGS. 3 and 4 and described at page 11, line 12 – page 12, line 2 is disposed adjacent the second side of the nonwoven needled layer. An aromatic polyether flame retardant polyurethane-based film layer shown as reference numeral 33 in FIGS. 3 and 4 and described at page 12, lines 7- page 13, line 9 is bonded by the adhesive layer 32 to the nonwoven needled layer 28.

Independent claim 35 is directed to a textile composite including a nonwoven needled layer with a first side with a flat felt texture and a second side as set forth at page 4, lines 20-22. A binder material comprising an acrylic latex binder as described at page 10, line 19 – page 11, line 10 is applied only to the second side of the nonwoven needled layer. An adhesive layer is disposed adjacent the second side of the nonwoven needled layer as described at page 11, line 12 – page 12, line 2. A polymeric film layer is bonded to the adhesive layer as described at page 2, lines 21-22 and page 12, lines 7-19.

GROUND OF REJECTION TO BE REVIEWED ON APPEAL

1. Whether or not claims 8 and 42 are properly rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement.
2. Whether or not claims 26 and 31 are properly rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement.
3. Whether or not claims 1-6, 8, 9-16, 18-20, 26, 35-40, 42, and 44-50 are properly rejected under 35 U.S.C. 103 as being obvious over Rubin et al. (U.S. 6,492,001) in view of Eschenbach (U.S. 5,672,222).
4. Whether or not claims 17, 23, 27-34, and 51 are properly rejected under 35 U.S.C. 103 as being obvious over Rubin et al. in view of Eschenbach and further in view of Hayes (U.S. 2004/0058603).

ARGUMENT

- A. Claims 8 and 42 are not properly rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement.

The Office Action states that the specification as originally filed does not provide support for a second binder material used in conjunction with the first binder material as is presently claimed. Appellants respectfully disagree.

The specification as originally filed presents various embodiments without limitation to the combination of features in those embodiments. The specification specifically contemplates that the non-woven needled layer comprised of batt 14

can receive a spray or a liquid application of a binder material such as acrylic latex at the applicator 25 (pg. 5, lines 22-24). The specification also contemplates that a binder material such as polyethylene fibers may be blended with the staple fibers. (pg. 10, lines 13-16). By teaching the use binder fibers in the batt in conjunction with a teaching that binder material may be sprayed onto a batt, it is respectfully submitted that one of skill in the art would readily recognize possession of the claimed subject matter.

The Office Action bases the rejection on the position that the specification teaches the use of binder fibers as an alternative to the latex binder. Appellants respectfully submit that this represents an unduly narrow reading of the specification. In this regard, the Office Action appears to be focusing on language in paragraph 29 that teaches that in one method a spray application of acrylic co-polymer can be used instead of using low melt fibers. However, the passage in the specification relied on by the Office Action is simply one example of possible binder application. The fact that the passage being relied upon represents a single limited example within the broader teachings of the application as a whole is reflected by the fact that it is limited to spray application of an acrylic co-polymer. Appellants respectfully submit that such a specific example should in no way limit or negate the broader teachings of the specification when considered as a whole.

The subject matter...need not be described literally or "in haec verba" in order for the specification to satisfy the description requirement. It is sufficient that the specification "convey clearly to those skilled in the art, to whom it is

addressed, in any way, the information that the applicant has invented the subject matter later claimed.” (*In re Wertheim*, 541 F.2d 257, 262, 191 USPQ 90, 97 (CCPA 1976), *appeal after remand*, 646 F.2d 527, 209 USPQ 554 (CCPA 1981). As noted above, in the present case the specification teaches the use binder fibers blended in the batt as well as a teaching that that binder material such as acrylic latex may be sprayed upon a batt. Based on these teachings it is respectfully submitted that one of ordinary skill in the art would clearly understand from the specification as originally filed that it is possible to use both a spray or a liquid application of a binder material as well as a blend of fibers including lower melting point fibers.

B. Claims 26 and 31 are improperly rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement.

The Office Action rejects claims 26 and 31 because they include the endpoint of 200 F while the original claims recite “greater than about 200 F”. Applicants respectfully submit that the use of the term “about” in both the original claim and the subsequent amendment renders the inclusion of the 200 F endpoint clear in both cases. That is, one of skill in the art reading the original claims would clearly understand that the Applicants were in possession of the claimed subject matter including the end point of 200 F since it is well established that the term “about” allows for values slightly above and slightly below the recited value. See, e.g. MPEP §2144.05.

C. Claims 1-6, 8, 9-16, 18-20, 26, 35-40, 42, and 44-50 are not properly rejected under 35 U.S.C. 103 as being obvious over Rubin et al. (U.S. 6,492,001) in view of Eschenbach (U.S. 5,672,222).

Applicants respectfully submit that the Office Action has not identified with suitable particularity any appropriate motivation for making the proposed modification to the primary reference. Moreover, the proposed modification appears to be inconsistent with the teachings of the primary reference. Accordingly, a *prima facie* case of obvious has not been established.

Obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion or motivation to do so found either explicitly or implicitly in the references themselves or in the knowledge generally available to one of ordinary skill in the art. MPEP §2143.01(I). The controlling case law and the MPEP make it clear that the prior art as a whole must suggest not only the possibility but also the desirability of the proposed combination. Thus, the fact that references can be combined or modified does not render the resultant combination obvious unless the prior art also suggests the desirability of that combination. MPEP §2143.01 (III). Likewise, the fact that the claimed invention may be within the capability of one of ordinary skill in the art does not establish *prima facie* obviousness. MPEP §2143.01(IV).

As noted at MPEP §2141, a determination of obviousness must be carried out in compliance with the standards enunciated by The Supreme Court in



Graham v. John Deere, 383 U.S. 1, 148 USPQ 459 (1966). Accordingly, the factual inquiries for determination of obviousness are as follows:

- (A) Determining the scope and contents of the prior art;
- (B) Ascertaining the differences between the prior art and the claims in issue;
- (C) Resolving the level of ordinary skill in the pertinent art; and
- (D) Evaluating evidence of secondary considerations.

Application of these inquiries to the instant case weighs against a determination of obviousness.

Rejection of Claim 1 and Claims Depending Therefrom

With respect to independent claim 1 and the claims dependent thereon, Appellants note that the claimed textile composite utilizes the combination of (i) a nonwoven needled layer of interlocked staple fibers having a first soft pile-containing side and (ii) a binder material comprising an acrylic latex binder applied to a second side of the nonwoven needled layer opposite the soft pile-containing side.

The Office Action has failed to identify a reference teaching application of an acrylic latex binder applied to the second (non-pile side) of a fabric, in the context of a composite as shown and described. Further, the Office Action is void of any express teaching, suggestion or motivation to combine elements from multiple references to re-construct such a combination -- other than the fact that the various components or sub-combinations of various components are can be found in multiple references.

The rejection of independent claim 1 is based on the position that the primary reference to Rubin discloses the claimed elements of the invention with the exception that the fabric of the invention is a needlepunched non-woven fabric. In fact, the invention is directed to a particular construction of a needlepunched non-woven fabric, and the particular features of the invention are not shown in Rubin, and are inconsistent with teachings of Rubin.

The Office Action concedes that Rubin does not teach with respect to suitable constructions for nonwoven fabrics. The Office Action provides an "Official Notice" that nonwoven fabrics having flat surfaces and pile surfaces are known, further citing Eschenbach. The Office Action then reaches the following incorrect conclusion of obviousness as set forth at paragraph 7 in the Office Action of January 13, 2005 and thereafter maintained as the basis for rejection to the present time.

**"...One skilled in the art would have been able to select a needlepunched nonwoven, with or without a pile side, as the nonwoven construction for the Rubin invention since said nonwovens are common in the art."** (emphasis added)

Further, on the issue of which reference teaches application of an acrylic latex binder to the non-pile side of the fabric, the Office Action states only that:

**... applicant is hereby given Official Notice that acrylic latexes are well known in the art....As such, it would have been readily obvious to one skilled in the art to employ an acrylic latex for the SBR [styrene butadiene rubber] latex of Eschenbach...." Office Action of April 25<sup>th</sup>, 2006, page 4.**

Thus, the rejection appears to be based exclusively on what would have been within the capabilities of one skilled in the art. A *prima facie* case for

obviousness is not present in this instance. As noted clearly at MPEP §2143.01(iv), the fact that a claimed invention may be within the capabilities of one of ordinary skill in the art because the various elements of the claimed invention were individually known in the art is not sufficient to establish a *prima facie* case of obviousness without some objective expressed reason to combine the teachings of the references. The Office Action has not provided any such objective reasoning.

The deficiency of the outstanding rejection is sufficient to warrant reversal. Further, it is noted that the teachings of cited art appear to weigh against the proposed combination, thereby supporting a determination of nonobviousness. Appellants note that claim 1 calls for a binder material comprising an acrylic latex binder applied to a second side of the nonwoven needled layer opposite the pile containing side. As set forth at paragraph 28 of the specification in the instant application, "...a binder acts to hold the fibers together within the nonwoven needled layer 28." Thus, it is this definition of "binder" that will control interpretation of that term. MPEP §211.01(III) citing *Toro Co. v. White Consolidated Industries Inc.*, 199 F.3d 1295, 1301, 53 USPQ2d 106, 1069 (Fed. Cir. 1999). (meaning of words used in a claim is not construed in a "lexicographic vacuum, but in the context of the specification and drawings").

The use of a binder of any type that holds or bonds fibers together is fundamentally inconsistent with the teachings of Rubin since a primary purpose is to retain a natural "hand", softness, and (i.e. feel) of the fabric. See, Col. 2, lines 43-51. While Rubin does teach that its fluorochemical treating agent may

be one of the many, many compounds that are referred to as "latex"-based, there is no teaching in Rubin of using an acrylic latex binder as recited in the present invention. Rubin specifically teaches that the treated fabric has "...substantially the same hand, feel, texture and drape of uncoated fabric..." See, Col. 5, lines 64-66; which is incompatible with use of a binder. Clearly, if the "latex" or repellent suggested in Rubin were hypothetically instead a "binder" or adhesive-type material, the fibers would be held or bonded together (i.e., "bound") and significant change in fabric tactile character would result --- which would be against the express wishes of Rubin to have a fabric with a natural "hand" exhibiting softness.

The treatment composition of Rubin cannot properly be considered to be a "binder", as required by independent claim 1 and all claims depending therefrom, as such a reading is inconsistent with the teachings of Rubin. Rubin teaches that the "treatment composition" is applied to the fabric preferably by drawing "through a bath of the treatment composition" so that it "cover[s] equally well both sides (i.e., surfaces) of the fabric as well as the surfaces of the fabric to cover the interstitial spaces within the fabric." See, Col. 3, lines 15-18; Col. 5, lines 20-30. Rubin teaches dunking the fabric in a bath, to achieve two-sided coverage. To any extent that the water repellent treatment compositions of Rubin are improperly considered as "binding agents" as required by the instant claims, one of ordinary skill in the art would not have been motivated to utilize a nonwoven needled layer having a soft pile on one of its surfaces as the textile layer in Rubin. In particular, those of ordinary skill in the art would have expected a

treatment composition incorporating binding agents to negatively impact the characteristics of the soft pile surface of the present invention by binding a portion of the adjacent soft pile fibers together. To suggest that one could apply a "binder" on both sides of a nonwoven, by immersion or other means --- without substantially and undesirably adversely impacting softness and fabric feel --- is simply not correct and inconsistent with common logic.

The rejection of claim 1 (and the claims depending therefrom) is insufficient. Moreover, the secondary reference to Eschenbach does not remedy these shortcomings. It is respectfully submitted that the outstanding rejections to claim 1 (and the claims depending therefrom) should not be maintained.

#### Rejection of Claim 35 and Claims Depending Therefrom

With respect to independent claim 35 and the claims dependent thereon, Appellants note that the claimed textile composite utilizes the combination of (i) a nonwoven needled layer of fibers having a first side with a flat felt texture and (ii) a binder material comprising an acrylic latex binder applied only to a second side of the nonwoven needled layer. The Office Action has failed to identify any teaching, suggestion or motivation to use such a combination other than the fact that the various components and/or sub-combinations of various components can be found individually in the art.

The rejection of independent claim 35 is based on the position that the primary reference to Rubin discloses the claimed elements of the invention with the exception that the nonwoven is a needlepunched non-woven fabric. The

Office Action acknowledges that Rubin says essentially nothing with respect to suitable constructions for nonwoven fabrics, and yet the present invention is directed to a particular construction of a nonwoven. Rubin has no teachings at all with regard to construction of a nonwoven. To address the deficiency in the teachings of Rubin, the Office Action provides Official Notice that nonwoven fabricshaving flat surfaces and pile surfaces are known, further citing Eschenbach. The Action then reaches the following conclusion of obviousness as set forth at paragraph 7 in the Office Action of January 13, 2005 and thereafter maintained as the basis for rejection to the present time.

**“...One skilled in the art would have been able to select a needlepunched nonwoven , with or without a pile side, as the nonwoven construction for the Rubin invention since said nonwovens are common in the art.” (emphasis added)**

Further, on the issue of which reference teaches application of an acrylic latex binder to the non-pile side of the fabric, the Office Action states only that:

**... applicant is hereby given Official Notice that acrylic latexes are well known in the art.....As such, it would have been readily obvious to one skilled in the art to employ an acrylic latex for the SBR [styrene butadiene rubber] latex of Eschenbach....” Office Action of April 25<sup>th</sup>, 2006, page 4.**

Thus, the rejection appears to be based exclusively on what would have been within the capabilities of one skilled in the art. As noted clearly at MPEP §2143.01(iv), the fact that a claimed invention may be within the capabilities of one of ordinary skill in the art because the references relied upon teach all aspects of the claimed invention were individually known in the art is not sufficient to establish a *prima facie* case of obviousness without some objective

reason to combine the teachings of the references. As best understood, the Examiner has not provided any such objective or express reasoning. Thus, the rejection of claim 35 (and the claims depending therefrom) is fundamentally deficient and should not be maintained.

Appellants note that the teachings of cited art appear to weigh against the proposed combination thereby supporting a determination of nonobviousness. In this regard, Appellants note that claim 35 calls for a binder material comprising an acrylic latex binder applied only to a second side of the nonwoven needled layer. As set forth at paragraph 28 of the specification in the instant application, "...a binder acts to hold the fibers together within the nonwoven needled layer 28." Thus, it is this definition of "binder" that will control interpretation of that term as it is used in the claims. MPEP §211.01(III) citing *Toro Co. v. White Consolidated Industries Inc.*, 199 F.3d 1295, 1301, 53 USPQ2d 106, 1069 (Fed. Cir. 1999). (meaning of words used in a claim is not construed in a "lexicographic vacuum, but in the context of the specification and drawings").

The use of a binder of any type that holds fibers together is fundamentally inconsistent with the teachings of Rubin since a primary purpose (according to the teachings of Rubin) is to retain a natural "hand" or softness and desirable "feel" of the fabric. See, Col. 2, lines 43-51. While Rubin does teach that its fluorochemical water repellant may in some cases be in the chemical class of "latex", there is no teaching of using an acrylic latex binder. To the contrary, Rubin specifically teaches use of a fluoro-repellant that will not diminish the feel or "hand" of the treated fabric: "...substantially the same hand, feel, texture and

drape of uncoated fabric..." See, Col. 5, lines 64-66. Clearly, if the latex used in Rubin were a "binder" material, the fibers would be held together and it is simply beyond question that adverse change in fabric tactile character would result, which counsels against any such improper re-constructive reading of Rubin.

Even if the latex in the treatment composition of Rubin is considered to be a "binder", the claimed combination applying latex to only one side as contemplated by the invention is completely inconsistent with the teachings of Rubin. Rubin teaches that the "treatment composition" is applied to the fabric so that it "cover[s] equally well both sides (i.e., surfaces) of the fabric as well as the surfaces of the fabric to cover the interstitial spaces within the fabric." See, Col. 3, lines 15-18. Rubin specifically teaches the fabric is submerged in a "bath of the treatment composition, as the treatment composition should uniformly coat both surfaces...". Col. 5, lines 25-31 (emphasis supplied). To the extent that the treatment compositions of Rubin are inappropriately considered as incorporating "binding agents" as required by the claims of Appellants' invention, one of ordinary skill in the art would not have been motivated to modify Rubin to treat only one surface as required by the instant claims since this would leave the other surface unprotected by the composition.

In addressing this argument, the Office Action stated that the latex binder is taught by Eschenbach, (and not necessarily by Rubin) and that it can be applied only to one side (contrary to the teachings of Rubin). Even on this basis, there would be no motivation to modify Rubin in the manner proposed. To the contrary, the express teaching in Eschenbach is that the latex coating adds



stiffness to the batt. See, Col. 2, lines 49-55. Thus, using the latex coating of Eschenbach in the structure of Rubin would be expected to stiffen the fabric layer or Rubin even beyond that already contemplated by Rubin by two-sided dunking of the fabric in a bath. Of course, this is in direct contradiction to the express goal in Rubin of avoiding any change to tactile character. The Rubin references should not be twisted and contorted in an effort to meet the claims of the present invention. The teachings of Rubin are inconsistent with the teachings of Eschenbach on the stiffening effect of latex.

The rejection of claim 35 (and the claims depending therefrom) is incorrect, and should be reversed. The secondary reference to Eschenbach does not remedy these deficiencies. Accordingly, it is respectfully submitted that the outstanding rejections to claim 35 (and the claims depending therefrom) should not be maintained.

D. Claims 17, 23, 27-34, and 51 are not properly rejected under 35 U.S.C. 103 as being obvious over Rubin et al. in view of Eschenbach and further in view of Hayes (U.S. 2004/0058603).

As regards claims 17 and 23, each of these claims ultimately depends from claim 1. As noted above, for numerous reasons provided, the rejection of claim 1 is deficient. The secondary reference to Hayes does not remedy these deficiencies. Accordingly, the rejection of claims 17 and 23 should not be maintained.

Claim 51 ultimately depends from claim 35. As noted above, for numerous reasons provided, the rejection of claim 35 is deficient. The secondary reference to Hayes does not remedy these deficiencies. Accordingly, the rejection of claim 35 should not be maintained.

Rejection of Claim 27 and Claims Depending Therefrom

With respect to independent claim 27 and the claims dependent thereon, Appellants note that the claimed textile includes a nonwoven needled layer having a first pile-containing side and a second side opposite the pile-containing side. The Office Action has not identified any teaching, suggestion or motivation in the cited art to alter Rubin to instead use a pile-surface material, other than the fact that such materials are generally known.

The outstanding rejection of independent claim 27 is based on the position that the primary reference to Rubin discloses the claimed elements of the invention with the exception that the fabric of the invention is a needlepunched non-woven fabric. The Office Action admits that Rubin provides no teachings at all with respect to suitable constructions for nonwoven fabrics. In order to address the deficiency in the teachings of Rubin, the Office Action provides "Official Notice" that nonwoven fabrics having flat surfaces and pile surfaces are known in general. The Office Action then reaches the following conclusion of obviousness as set forth at paragraph 7 in the Office Action of January 13, 2005 and thereafter maintained as the basis for rejection to the present time.

**“...One skilled in the art would have been able to select a needlepunched nonwoven, with or without a pile side, as the nonwoven construction for the Rubin invention since said nonwovens are common in the art.” (emphasis added)**

Further, on the issue of which reference teaches application of an acrylic latex binder to the non-pile side of the fabric, the Office Action states only that:

**... applicant is hereby given Official Notice that acrylic latexes are well known in the art.....As such, it would have been readily obvious to one skilled in the art to employ an acrylic latex for the SBR [styrene butadiene rubber] latex of Eschenbach....” Office Action of April 25<sup>th</sup>, 2006, page 4.**

Thus, the rejection appears to be based exclusively on what would have been within the capabilities of one skilled in the art in the modification of Rubin. As noted clearly at MPEP §2143.01(iv), the fact that a claimed invention may be within the capabilities of one of ordinary skill in the art because the references relied upon teach all aspects of the claimed invention were individually known in the art is not sufficient to establish a *prima facie* case of obviousness without some objective reason to combine the teachings of the references. However, the Office Action has not provided any such objective reasoning. Thus, the rejection of claim 27 (and the claims depending therefrom) is fundamentally deficient.

#### Rejection of Claim 32 and Claims Depending Therefrom

With respect to independent claim 32 and the claims dependent thereon, Appellants note that the claimed textile composite utilizes the combination of (i) a nonwoven needled layer of fibers having a first pile-containing side and (ii) a

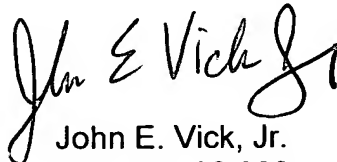
binder material comprising an acrylic latex binder applied to a second side of the nonwoven needled layer opposite the pile containing side.

The Office Action has not identified any teaching, suggestion or motivation to use such a combination other than the fact that the various components and/or sub-combinations of various components are geneally known. Moreover, for the reasons outlined with respect to claim 1 above, the use of the proposed hypothetical combination of a binder material (as defined by the instant application) in conjunction with a pile surface non-woven in the primary reference to Rubin appears to be fundamentally inconsistent with the teachings of Rubin. The secondary reference to Hayes does not remedy these deficiencies. The rejection of claim 32 (and the claims depending therefrom) is fundamentally deficient and should be reversed.

Conclusion

For the above reasons, Appellant respectfully requests the Appeal Board to reverse the decision of the Examiner. In the event that there are additional fees associated with the submission of these papers, Applicant hereby authorizes the Commissioner to withdraw those fees from our Deposit Account No. 04-0500. Also, in the event that additional time is required to have the papers submitted herewith for the above referenced application to be considered timely, Applicant hereby petitions for any additional time required to make these papers timely and authorization is hereby granted to withdraw any additional fees necessary for this additional time from our Deposit Account No. 04-0500.

Respectfully Submitted,

  
John E. Vick, Jr.  
Reg. No. 33,808

## CLAIMS APPENDIX

1. A layered textile composite having a pile, the composite comprising:
  - (a) a nonwoven needled layer, said nonwoven needled layer being comprised of mechanically interlocked staple fibers, said nonwoven needled layer having a first pile-containing side and a second side opposite said first side;
  - (b) a binder material applied to said second side of said nonwoven needled layer, said binder material comprising an acrylic latex binder,
  - (c) an adhesive layer adjacent said second side of said nonwoven needled layer; and
  - (d) a polymeric film layer adjacent said adhesive layer.
2. The textile composite of claim 1 wherein said staple fibers are comprised of at least some fibers selected from the group of fibers consisting of: polyester, polypropylene, nylon, polyethylene, polyamides, high density polyethylene, linear low density polyethylene, polytetrafluoroethylene (PTFE), aramids, rayon, acetates, acrylics, olefins, polyethylene terephthalate (PET), isophthalate modified PET, glycol modified PET, and polylactic acid (PLA).
3. The textile composite of claim 1 wherein said fibers comprise polyester fibers.
4. The textile composite of claim 1 wherein said fibers comprise polypropylene fibers.
5. The textile composite of claim 1 wherein said fibers comprise ~~at least~~ a blend of polyester and polypropylene fibers.
6. The textile composite of claim 1 in which the weight of the nonwoven needled layer is between about 5 and about 20 ounces per square yard.

7. (Canceled)

8. The textile composite of claim 1 wherein the nonwoven needled layer further comprises a second binder material, and said second binder material comprises a low melt polyethylene fiber or a bicomponent polyester fiber.

9. (Canceled)

10. The textile composite of claim 1 wherein said binder material further comprises a flame retardant composition.

11. The textile composite of claim 10 wherein said flame retardant material is provided in said nonwoven needled textile at a concentration of between about 1 and about 12 ounces per square yard.

12. The textile composite of claim 1 in which said fibers contain a flame retardant material.

13. The textile composite of claim 12 wherein said flame retardant material comprises a bromine-containing composition.

14. The textile composite of claim 12 wherein said flame retardant material comprises a phosphorous-containing composition.

15. The textile composite of claim 1 wherein said adhesive comprises a polyester adhesive.

16. The textile composite of claim 1 wherein said polymeric film comprises a polyurethane film.

17. The textile composite of claim 16 wherein said polyurethane film comprises an aromatic polyether.
18. The textile composite of claim 16 wherein said polyurethane film has a thickness of about 5 mils or less.
19. The textile composite of claim 1 wherein said adhesive layer comprises a heat-activated, polyester adhesive.
20. The textile composite of claim 1 wherein said composite further comprises a fluorochemical coating upon said first side of said nonwoven needled layer.
21. (Canceled)
22. (Canceled)
23. The textile composite of claim 1 wherein said polymeric film layer comprises a halogenated aromatic polyether.
24. (Canceled)
25. (Canceled)
26. The textile composite of claim 15 wherein said polyester adhesive exhibits a melting point of about 200 degrees Fahrenheit or greater.
27. A textile comprising:
  - (a) a nonwoven needled layer, said nonwoven needled layer being comprised of polymeric fibers, said polymeric fibers being selected from the group



consisting of polyester fibers, polypropylene fibers, and mixtures thereof, at least a portion of said polymeric fibers comprising a flame retardant material, said nonwoven needled layer having a first pile-containing side and a second side opposite said first pile-containing side;

(b) an adhesive layer applied to said second side of said nonwoven needled layer; and

(c) a polyurethane film layer bonded to said nonwoven needled layer, said polyurethane film layer comprising an aromatic polyether.

28. The textile of claim 27 wherein said polyurethane film layer comprises a halogenated aromatic polyether.

29. The textile of claim 27 wherein said nonwoven needled layer is coated on its pile-containing side with a fluorochemical.

30. The textile of claim 27 wherein said adhesive layer comprises a polyester adhesive.

31. The textile of claim 30 wherein said polyester adhesive exhibits a melting point of about 200 degrees Fahrenheit or greater.

32. A textile comprising:

(a) a nonwoven needled layer, said nonwoven needled layer being comprised of fibers, said nonwoven needled layer having a first pile-containing side and a second side opposite said first pile-containing side;

(b) a binder material applied to said second side of said nonwoven needled layer, said binder material comprising an acrylic latex binder,

(c) a polyester-based adhesive layer adjacent said second side of said nonwoven needled layer; and

(d) a flame retardant polyurethane-based film layer bonded by said adhesive layer to said nonwoven needled layer, said polyurethane-based film layer comprising an aromatic polyether.

33. The textile of claim 32 wherein said nonwoven needled layer further comprises a fluorochemical coating upon said first pile-containing side.

34. The textile of claim 33 wherein said fluorochemical coating comprises a fluorine-containing hydrocarbon which is adapted for repelling moisture and release of stains from said pile-containing side of said nonwoven needled layer.

35. A layered textile composite, the composite comprising:

(a) a nonwoven needled layer, said nonwoven needled layer being comprised of fibers, said nonwoven needled layer having a first side with a flat felt texture, and a second side;

(b) a binder material applied only to said second side of said nonwoven needled layer, said binder material comprising an acrylic latex binder,

(c) an adhesive layer adjacent said second side of said nonwoven needled layer; and

(d) a polymeric film layer bonded to said adhesive layer.

36. The textile composite of claim 35 wherein said fibers are selected from the group consisting of polyester fibers, polypropylene fibers, and mixtures thereof.

37. The textile composite of claim 35 wherein said fibers comprise polyester fibers.

38. The textile composite of claim 35 wherein said fibers comprise polypropylene fibers.

39. The textile composite of claim 35 wherein said fibers comprise a blend of polyester and polypropylene fibers.

40. The textile composite of claim 35 in which the weight of the nonwoven needled layer is between about 5 and about 20 ounces per square yard.

41. (Canceled)

42. The textile composite of claim 35 wherein the nonwoven needled layer further comprises a second binder material, and said second binder material comprises a low melt polyethylene fiber.

43. (Canceled)

44. The textile composite of claim 35 wherein said binder material further comprises a flame retardant composition.

45. The textile composite of claim 44 wherein said flame retardant composition is provided in said nonwoven needled textile at a concentration of between about 1 and about 12 ounces per square yard.

46. The textile composite of claim 35 in which said synthetic fibers contain a flame retardant material.

47. The textile composite of claim 46 wherein said flame retardant material comprises a bromine-containing composition.

48. The textile composite of claim 46 wherein said flame retardant material comprises a phosphorous-containing composition.

49. The textile composite of claim 35 wherein said adhesive layer comprises a polyester adhesive.

50. The textile composite of claim 35 wherein said polymeric film comprises a polyurethane film.

51. The textile composite of claim 50 wherein said polyurethane film comprises an aromatic polyether.

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## EVIDENCE APPENDIX

None

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## RELATED PROCEEDINGS APPENDIX

None